

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA :  
 :  
 v. : CRIMINAL ACTION NO.  
 : 1:11-CR-19-TCB-CCH-1  
 CALIXTO MARTINEZ-LEAL :  
 :

**ORDER FOR SERVICE OF REPORT AND RECOMMENDATION**

Attached is the Report and Recommendation of the United States Magistrate Judge in this action in accordance with 28 U.S.C. § 636(b)(1) and this Court's Criminal Local Rules 12.1(E) and 58.1(A)(3).

Pursuant to 28 U.S.C. § 636(b)(1), each party may file written objections, if any, to the Report and Recommendation within fourteen (14) days of service of this Order. Should objections be filed, they shall specify with particularity the alleged error or errors made (including reference by page number to the transcript if applicable) and shall be served upon the opposing party. The party filing objections will be responsible for obtaining and filing the transcript of any evidentiary hearing for review by the District Court. Failure to file an objection to the Report and Recommendation waives a party's right to review. Fed. R. Crim. P. 59(b)(2).

Pursuant to 18 U.S.C. 3161(h)(1)(D), the above referenced fourteen (14) days allowed for filing objections are **EXCLUDED** from the computation of time under the Speedy Trial Act. At the end of such fourteen-day period, if there are no objections, the Clerk is **DIRECTED** to submit this Report and Recommendation to the District Judge. If there are objections, the other party or parties shall have fourteen (14) days from the filing of those objections to respond, and that fourteen-day period shall also be **EXCLUDED** from the computation of time under the Speedy Trial Act. Thereafter, the Report and Recommendation along with any objections and responses shall be submitted to the District Judge.

After such submission of this Report and Recommendation to the District Judge, whether or not objections have been filed, the Clerk is **DIRECTED** to **EXCLUDE** from the computation of time under the Speedy Trial Act the time, up to thirty (30) days, that this Report and Recommendation is under advisement before the District Court. *Henderson v. United States*, 476 U.S. 321, 331 (1986) (the Speedy Trial Act “exclude[s] all time that is consumed in placing the trial court in a position to dispose of a motion”); *United States v. Mers*, 701 F. 2d 1321, 1337 (11th Cir. 1983)

("[T]he magistrate and the district court have thirty days each during which to take pretrial motions under advisement.").

IT IS SO ORDERED this 6th day of July, 2011.

  
C. CHRISTOPHER HAGY  
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA :  
 :  
 v. : CRIMINAL ACTION NO.  
 : 1:11-CR-19-TCB-CCH-1  
 CALIXTO MARTINEZ-LEAL :  
 :

**REPORT AND RECOMMENDATION**

Together with Co-Defendant Alfonzo Delgado-Paz, Defendant Calixto Martinez-Leal is charged with conspiring with the intent to distribute controlled substances and with possessing a controlled substance with the intent to distribute it, all in violation of 21 U.S.C. §§ 846 and 841 and 18 U.S.C. § 2.

Defendant Martinez-Leal has filed a Motion to Sever Defendants [36] requesting that the Court sever his trial from that of his Co-Defendant on the ground that his Co-Defendant made statements to law enforcement officers that incriminate Defendant and that, if he is tried with his Co-Defendant, those statements could be admitted as evidence through the testimony of the officers as an exception to the hearsay rule. If those statements are admitted as evidence and his Co-Defendant exercises his right not to testify, Defendant argues that he would be denied his Sixth

Amendment right to confront a witness against him. *See Bruton v. United States*, 391 U.S. 123 (1968).

*Bruton* holds that defendants must be tried separately if a non-testifying defendant's statement is admitted in evidence and implicates another defendant. At the pretrial conference in this case the Assistant United States Attorney advised the Court that, if it does not suppress the statements made by Co-Defendant Delgado-Paz, they cannot be redacted to protect Defendant's interests and Defendant's Motion to Sever [36] should be granted.

This Court having recommended that the statements of Co-Defendant Delgado-Paz not be suppressed, *see* Report and Recommendation [52] filed on this date, it **RECOMMENDS** that the Motion to Sever Defendants [36] filed by Defendant Calixto Martinez-Leal be **GRANTED**.

**IT IS SO RECOMMENDED** this 6th day of July, 2011.

  
C. CHRISTOPHER HAGY  
UNITED STATES MAGISTRATE JUDGE